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by obstructing the water in a stream by the construction of a fence and water gate across the stream and culverts therein, the evidence showed that the land overflowed was liable to overflow by reason of high water in the stream before the fence and gate and culverts were built, an instruction that it was the duty of defendant, in building the fence and gate and culverts, to so build them as not to obstruct such extraordinary flows of water as it might reasonably expect would occasionally flow down the stream, but, if the damage complained of was caused by a volume of water in the stream so great that no reasonably prudent person would have been expected to foresee it, defendant was not liable, was misleading.

JOHNSON, Treasurer, et al. *v.* TRUSTEES OF HAMPTON NORMAL & AGRICULTURAL INSTITUTE.

June 14, 1906.

[54 S. E. 31.]

Taxation—Collection of Taxes—Injunction—Adequate Remedy at Law.—In view of Va. Code 1904, § 567, providing that any person assessed for taxes on land aggrieved by the assessment may apply for relief to the court in which the commissioner of the revenue gave bond, a bill in equity against the county treasurer and commissioner of the revenue, will not lie to enjoin the collection of taxes assessed.

[Ed. Note.—For cases in point, see vol. 45, Cent. Dig. Taxation, §§ 1230-1241.]

WILKIE *v.* RICHMOND TRACTION CO.

June 14, 1906.

[54 S. E. 43.]

1. Street Railroads—Injuries to Person on Track.—In an action for injuries to one struck by a car while walking on the track, the court instructed that, if persons generally walked on the track at that point it was the duty of defendant to exercise reasonable care to discover persons so using the track, and that if defendant's servants, in the exercise of a proper lookout, failed to observe plaintiff's persistence in remaining on the track, and did not then exercise all reasonable care to avoid an accident, defendant was liable. Held, that the instruction was erroneous, because if defendant's servants exercised proper care they had discharged defendant's duty, and it was not liable, though plaintiff's presence was not observed.

[Ed. Note.—For cases in point, see vol. 44, Cent. Dig. Street Railroads, § 195.]

2. Same—Contributory Negligence.—The court instructed that if the injury was caused by the negligence of defendant's servant's and without any greater want of ordinary care and caution on the part of the plaintiff than was reasonably to be expected of him under the